



**M E R J**

**EXCHANGE LIMITED  
MARKET RULES**

Version 17: 05 October 2018  
Enforcement Date: 01 February 2019

# MERJ EXCHANGE LIMITED

## MARKET RULES

### TABLE OF CONTENT

DEFINITIONS.....	5
SECTION 1.....	17
GENERAL PROVISIONS OF THE RULES .....	17
1.1 Legal status of the Exchange .....	17
1.2 Addresses .....	17
1.3 Status of the Rules and the Directives.....	17
1.4 Amendments to the Rules .....	18
1.5 Directives .....	19
1.6 Notices to ATS Participants.....	19
SECTION 2.....	20
MEMBERS.....	20
2.1 Categories of members criteria.....	20
2.2 Member criteria .....	20
2.3 Application for authorisation of a member.....	22
2.4 Termination of member status .....	23
2.5 Duties of Officers and traders .....	24
2.6 Application for authorisation and registration of an officer.....	25
2.7 Capital adequacy requirements .....	26
2.8 Inspections.....	26
2.9 Fees and levies .....	26
SECTION 3.....	27
FUNCTIONS AND DUTIES OF MEMBERS.....	27
3.1 All members shall ensure that they have the following in place before providing any services to clients:.....	27
3.2 Trading Services Provider .....	27
3.3 Custody services Provider (CSP) .....	28
3.4 Advisory Service Providers (ASP) .....	30
SECTION 4.....	31
ACCOUNTING RECORDS AND SEGREGATION OF ASSETS .....	31
4.1 General Requirements for accounting records and audit for members .....	31



4.2	Segregation of ATS Participant assets and the Exchange assets.....	31
SECTION 5.....		33
TRADING AND REPORTING .....		33
5.1	General trading and reporting requirements .....	33
5.2	Member trades .....	34
5.3	Priority of clients' orders .....	34
5.5	Agency trading and reporting.....	35
5.6	Off-market trades between members .....	36
5.7	Affected person trades (related person) .....	37
5.8	Matching criteria .....	37
5.9	Restrictions on trading for members and their directors, officers or employees .....	37
5.10	Unreasonable and void trades.....	37
5.11	Prices, turnover and data .....	38
5.12	Short selling .....	38
5.13	Emergency powers.....	38
SECTION 6.....		40
CLEARING AND SETTLEMENT .....		40
6.1	General clearing and settlement provisions .....	40
6.2	Specific clearing and settlement requirements .....	41
6.3	Margin on trades in listed securities.....	41
6.4	Penalties for late settlements.....	42
6.5	Failed trades process and triggers.....	43
6.6	Failed trade buy-in procedure.....	43
6.7	Failed trade sell-out procedure .....	44
6.8	Penalties for failed settlements.....	46
SECTION 7 .....		47
DEFAULTS .....		47
7.1	Default Protocol.....	47
7.2	Events of Default .....	47
7.3	Declaration of Default.....	48
7.4	Appointment of Default Official .....	48
7.5	Suspension of a member for a failed trade .....	49
7.6	Member default procedure .....	49
7.7	Client default procedure .....	50
SECTION 8.....		51



THE GUARANTEE FUND.....	51
8.1 Objects of the Guarantee Fund .....	51
8.2 Claims allowed against the Guarantee Fund .....	51
8.3 Trustees of the Guarantee Fund.....	52
8.4 Administration and consideration of claims.....	52
8.5 Duties of the Trustees .....	53
8.6 Administration of the Guarantee fund .....	53
8.7 Contributions to the Guarantee Fund.....	53
8.8 Limitation of payment of claims .....	54
8.9 Winding up of the Guarantee Fund.....	54
8.10 Surplus Funds .....	54
SECTION 9.....	55
MARKET REGULATION.....	55
9.1 Objects of the Regulatory Framework .....	55
9.2 Supervision, compliance and surveillance .....	55
9.3 Powers, duties and procedures for enforcement.....	55
9.4 Co-operation with the Securities Authority and other applicable Regulatory Organisations.....	56
9.5 Confidentiality.....	56
SECTION 10.....	57
COMPLAINTS AND DISPUTE RESOLUTION.....	57
10.1 Definitions .....	57
10.2 Internal Complaints Resolution Process .....	57
10.3 Internal complaint resolution procedures .....	58
10.4 Disputes .....	58
10.5 Composition of the Dispute Resolution Body.....	58
10.6 Dispute Resolution Body Procedures .....	59
10.7 Dispute Appeal Body (DAB) .....	60
SECTION 11.....	62
DISCIPLINARY ACTIONS AND SANCTIONS .....	62
11.1 General Powers of the Disciplinary Committee.....	62
11.2 Co-operation of members.....	62
11.3 Investigation protocol.....	63
11.4 Burden of proof.....	63
11.5 Composition of the Disciplinary Committee .....	63



11.6	Disciplinary Committee protocol .....	64
11.7	The Disciplinary Hearing .....	64
11.8	Sanctions .....	65
SECTION 12	.....	68
FEES AND LEVIES	.....	68
SECTION 13	.....	69
LIMITATION OF LIABILITY	.....	69



## DEFINITIONS

TERM	MEANING
“Act”	means the <b>Seychelles Securities Act</b> , 2007 as may be amended and any regulation prescribed by the Minister responsible for finance or the <b>Securities Authority</b> ;
“advertise”	means “advertise” as defined in the <b>Act</b> ;
“advice”	<p>means any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to a <b>client</b> in respect of <b>transactions</b> of <b>listed securities</b> and irrespective of whether or not such <b>advice</b> results in any such <b>transaction</b> being effected, but does not include:</p> <ul style="list-style-type: none"><li>a) factual <b>advice</b> given merely:<ul style="list-style-type: none"><li>i. on the procedure for entering into a <b>transaction</b> in respect of <b>listed securities</b>;</li><li>ii. in relation to the description of <b>listed securities</b>;</li><li>iii. in reply to routine administrative queries;</li><li>iv. in the form of objective information about <b>listed securities</b>; or</li><li>v. by the display or distribution of promotional material;</li></ul></li><li>b) an analysis or report on <b>listed securities</b> without any express or implied recommendation, guidance or proposal that any particular <b>transaction</b> in respect of the <b>listed securities</b> is appropriate to the particular investment objectives, financial situation or particular needs of a <b>client</b>;</li></ul>
“advisory services”	<p>means the services provided by an <b>Advisory Services Provider</b> to its <b>clients</b>, and includes:</p> <ul style="list-style-type: none"><li>a) providing <b>advice</b> in respect of <b>listed securities</b> to its <b>clients</b>; and</li></ul>



- b) exercising discretion in the **management of securities** on behalf of its **clients**;

**“Advisory Services Provider”** or **“ASP”**

means a **member** who has been authorised by **the Exchange** to provide **advisory services** in terms of **these Rules**;

**“affected person”**

means, in so far as it relates to a director, **officer, trader** or employee of a **member**:

- a) that **person’s** spouse;
- b) that **person’s** child, parent, step-child, or step parent and any spouse of such **person**;
- c) any **person** who has entered into an agreement with that **person** relating to a **transaction**;
- d) any trust controlled or influenced by that **person**; or
- e) any company, holding company, subsidiary or group of companies in which that **person** has any direct or indirect interest, shares, influence or control; or
- f) any other legal entity under the control of that **person**.

**“agency trade”**

means where a **member** executes a **trade** on behalf of a **client**;

**“AMLA”**

Means the **Seychelles** Anti-Money Laundering Act, 2006 (as amended);

**“announcement”**

means any information relating to **listed securities** or a general **announcement** to the public published by **the Exchange** in printed or **electronic form**;

**‘applicant’**

means a **person** who applies for acceptance as a **member** of **the Exchange** in terms of Section 2 of **these Rules**;

**“auditor”**

means **“auditor”** as defined in the **Act**;

**“Automated Trading”**

means **the Exchange** trading system which comprises the software, hardware, communications and network systems, which are used to

<b>System” or “ATS”</b>	carry out the trading and reporting of <b>transactions</b> or other operations related to such <b>transactions</b> ;
<b>“ATS Participant”</b>	means a <b>Member</b> or direct <b>client</b> of <b>the Exchange</b> ;
<b>“ATS Participant Agreement”</b>	means an agreement between <b>the Exchange</b> and each <b>ATS Participant</b> ;
<b>“bank”</b>	means <b>“bank”</b> as defined in the <b>Act</b> ;
<b>“beneficial owner” or “beneficial ownership”</b>	means the <b>person</b> on whose behalf <b>securities</b> are held by or <b>CAP</b> and who is reflected in the register maintained by the <b>CSP</b> or <b>CAP</b> ;
<b>“bid”</b>	means a buy <b>order</b> at which a buyer is willing to acquire a listed <b>security</b> ;
<b>“business day”</b>	means any day except for Saturday and Sunday, a public holiday within the meaning of the Public Holidays Act 1976 and excluding any other day on which <b>the Exchange</b> is closed;
<b>“Chairperson”</b>	means the <b>person</b> appointed as <b>Chairperson</b> of the <b>Controlling Body of the Exchange</b> in terms of <b>these Rules</b>
<b>“clear” or “cleared” or “clearing”</b>	in relation to a <b>transaction</b> in <b>listed securities</b> , means: <ul style="list-style-type: none"> <li>a) the process in terms of which the <b>clearing agency</b> becomes the buyer from the seller and the seller to the buyer in every <b>trade</b> whereupon the <b>Clearing Agency Participant</b> guarantees to the <b>clearing agency</b> all obligations arising out of any position resulting from such <b>trade</b>; and</li> <li>b) to calculate and determine, before each <b>settlement</b>: <ul style="list-style-type: none"> <li>I. the exact number or nominal value of <b>securities</b> of each kind to be transferred by or on behalf of a seller;</li> </ul> </li> </ul>



- II. the amount of money to be paid by or on behalf of a buyer, to enable **settlement** of a **transaction** or group of **transactions**; or
- c) where applicable, the process by means of which:
  - i. the functions referred to in paragraph a) are performed; and
  - ii. the due performance of the **transaction** is underwritten from the time of **trade** to the time of **settlement**;

**“clearing agency”** means a company that is licensed and regulated in **Seychelles** or a **recognised jurisdiction** for the provision of **clearing** and **settlement** services of **securities**;

**“clearing agreement”** means a written agreement entered into between a **Clearing Agency Participant (CAP)** and an **ATS Participant** in terms of which the **ATS Participant** guarantees to the **Clearing Agency Participant** the performance of the obligations arising out of the positions of the **ATS Participant** and the **clients** of the **ATS Participant** where applicable;

**“clearing agency agreement”** means a written agreement entered into between a **Clearing Agency Participant** and an approved **clearing agency** in terms of which the **Clearing Agency Participant** guarantees to the **clearing agency** all obligations arising out any position **cleared** by the **clearing agency**;

**“Clearing Agency Participant”** or **“CAP”** means the same as “participant” as defined in Section 22(1) of the **Act**;

**“clearing agency services”** means **clearing** and **settlement** of **transactions** in **securities**;

**“client”** means an **ATS Participant** or **client** of a **member** as the context requires;

**“client agreement”** means an agreement between a **member** and its **client**, the basic terms and formal requirements of which have been prescribed by **Directive 10**;

<b>“closing price”</b>	means the price of the last <b>trade</b> , of the day according to the trading period as defined in <b>Directive 3</b> or such other <b>directive</b> as may amend or replace <b>Directive 3</b> , unless the price of the last <b>trade</b> is below the market <b>bid</b> or above the market <b>offer</b> , in which case it shall be the market <b>bid</b> or market <b>offer</b> respectively;
<b>“Code of Conduct”</b>	means the <b>Securities (Conduct of Business) Regulations 2008</b> which for the purpose of <b>these Rules</b> is applicable to all <b>members of the Exchange</b> including both <b>securities dealers</b> and recognized overseas <b>securities dealers</b> ;
<b>“competency requirements”</b>	means the minimum acceptable qualifications as required by <b>the Exchange</b> for various employees and <b>officers</b> as further provided in <b>Directive 2</b> , as may be amended or replaced from time to time;
<b>“Compliance Officer”</b>	means the <b>officer</b> registered with <b>the Exchange</b> by a <b>member</b> to ensure compliance by the <b>member</b> with the <b>Act</b> and <b>these Rules</b> ;
<b>“Controlling Body”</b>	means the board of directors of <b>the Exchange</b> ;
<b>“corporate actions”</b>	means actions authorised by the <b>issuer</b> of a listed <b>security</b> which have an impact on the valuation of that listed <b>security</b> ;
<b>“custody services”</b>	means the services provided by a <b>CSP</b> on behalf of its <b>managed clients</b> or another <b>member</b> and that <b>member’s clients</b> , in relation to the <b>management of securities</b> and <b>funds</b> to be used for the purchase of <b>securities</b> , held by a <b>member</b> on behalf of these <b>managed clients</b> ;
<b>“Custody Services Provider” or “CSP”</b>	means a <b>member</b> who has been authorised by and registered with <b>the Exchange</b> in terms of Section 62 of the <b>Act</b> of perform <b>custody services</b> ;
<b>“Defaulting Client”</b>	means an <b>ATS Participant</b> or a <b>client</b> of a <b>member</b> who has defaulted in terms of their <b>clearing</b> and <b>settlement</b> obligations in terms of Section 6 of <b>these Rules</b> and <b>Directive 4</b> , as may be amended or replaced from time to time;



<b>“Defaulting ATS Participant”</b>	means a <b>member</b> who fails to meet the <b>clearing</b> and <b>settlement</b> obligations in terms of Section 6 of <b>these Rules</b> and <b>Directive 4</b> , as may be amended or replaced from time to time, and is declared a defaulter by <b>the Exchange</b> ;
<b>“Default Official”</b>	means an employee of <b>the Exchange</b> and appointed by the Head of <b>Market Regulation</b> to oversee default proceedings of a Defaulting <b>ATS Participant</b> ;
<b>“Designated Market”</b>	means a <b>Seychelles securities exchange</b> or <b>recognised overseas securities exchange</b> in a <b>recognised jurisdiction</b> as prescribed in and pursuant to the <b>Act</b> ;
<b>“directive”</b>	means a <b>directive</b> issued by <b>the Exchange</b> in accordance with <b>these Rules</b> ;
<b>“Directives”</b>	means the document containing each <b>directive</b> issued by MERJ Exchange limited which must be read in conjunction with <b>these Rules</b> ;
<b>“Disciplinary Committee”</b>	means the committee appointed by <b>the Exchange</b> to enforce disciplinary procedures according to the <b>Act</b> and <b>these Rules</b> ;
<b>“electronic form”</b>	means any information, document or correspondence generated, sent, received or stored in any computer storage media such as magnetic, optical, computer memory or other similar devices or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time;
<b>“electronic money”</b>	means <b>“electronic money”</b> as defined in the Financial Institutions <b>Act</b> , 2004, as may be amended;
<b>“entity”</b>	means any incorporated or unincorporated <b>entity</b> either domiciled in the <b>Seychelles</b> or in a foreign country;
<b>“Executive Committee”</b>	means the committee appointed to manage the day-to-day affairs of <b>the Exchange</b> and, in the absence of an appointed committee, the board of directors of the Exchange;

<b>“execution price”</b>	means the price of a <b>matched trade</b> ;
<b>“exempt overseas securities dealer”</b>	means a recognized overseas <b>securities dealer</b> who is a <b>member</b> of <b>the Exchange</b> as provided for under Section 45 of the <b>Act</b> ;
<b>“failed trade”</b>	means a <b>trade</b> designated as such a <b>“failed trade”</b> by <b>the Exchange</b> on the basis that neither the <b>client, member</b> and/or <b>the Exchange</b> is able to ensure <b>settlement</b> as prescribed;
<b>“fees” and “levies”</b>	means the <b>fees</b> or <b>levies</b> published by <b>the Exchange</b> in <b>Directive 7</b> ;
<b>“fit and proper”</b>	means a <b>person</b> that: <ul style="list-style-type: none"> <li>a) is honest and has integrity;</li> <li>b) meets the <b>competency requirements</b>, prescribed in <b>these Rules</b> and <b>Directives</b>;</li> <li>c) meets the experience requirements, prescribed in <b>these Rules</b> and <b>Directives</b>;</li> <li>d) has the relevant qualifications and passed the necessary examinations as prescribed in <b>these Rules</b> and <b>Directives</b>;</li> <li>e) where applicable, be engaged in the necessary continuous professional development;</li> <li>f) must have the necessary operational ability as prescribed in <b>these Rules</b>; and</li> <li>g) must display a high level of financial soundness;</li> </ul>
<b>“funds”</b>	includes banknotes and coins, scriptural money, <b>electronic money</b> and virtual financial assets;

<b>“Guarantee Fund”</b>	means the fund established and maintained by <b>the Exchange</b> , in terms of the <b>Act</b> , to provide compensation to <b>members</b> and/or <b>prejudiced clients</b> in accordance with <b>these Rules</b> , against re- <b>transaction</b> price losses only as a result of a failure of a Defaulting <b>ATS Participant</b> or <b>Defaulting Client</b> to settle a <b>matched trade</b> ;
<b>“in writing”</b>	means, in relation to anything which, in terms of the <b>Act</b> and <b>these Rules</b> must be done <b>in writing</b> and includes any such correspondence done in <b>electronic form</b> ;
<b>“issuer”</b>	means <b>“issuer”</b> as defined in the <b>Act</b> ;
<b>“listed securities”</b>	means instruments admitted to a market operated by <b>the Exchange</b> ;
<b>“Listing Requirements”</b>	means the rules which govern the admission of instruments on a market operated by <b>the Exchange</b> ;
<b>“management of securities”</b>	means: <ul style="list-style-type: none"> <li>a) the giving of instructions, on behalf of another <b>person</b>, to buy or sell <b>securities</b> on behalf of that other <b>person</b>;</li> <li>b) the buying or selling of <b>securities</b> on behalf of another <b>person</b> on the instructions of that other <b>person</b>;</li> <li>c) the furnishing of <b>advice</b> to any <b>person</b> in connection with the buying and selling of <b>securities</b>;</li> <li>d) the handling of another <b>person’s funds</b> intended for the purchase of <b>securities</b> on behalf of that other <b>person</b>; or</li> <li>e) granting <b>clients</b> direct access to the <b>ATS</b></li> </ul>
<b>“managed client”</b>	means a <b>client</b> on whose behalf a <b>member</b> is acting; whose <b>funds</b> and <b>listed securities</b> are under the management of that <b>member</b> ;
<b>“market halt”</b>	means a situation that arises when <b>the Exchange</b> restricts or halts any <b>transactions</b> in <b>listed securities</b> ;

<b>“Market Regulation”</b>	means the market regulation division of <b>the Exchange</b> ;
<b>“match” or “matched”</b>	means any <b>order</b> that has been <b>matched</b> on the <b>ATS</b> during the continuous trading period or auction period matching processes which then becomes a <b>matched trade</b> and is legally binding;
<b>“member”</b>	means a <b>securities dealer</b> or recognized overseas <b>securities dealer</b> that has been admitted as a <b>member of the Exchange</b> ;
<b>“nominee”</b>	means a wholly owned subsidiary of a <b>member</b> approved as a <b>CSP</b> that holds <b>securities</b> or an interest in <b>securities</b> in custody on behalf of other <b>persons</b> in terms <b>these Rules</b> ;
<b>“non-managed client”</b>	means a <b>client</b> of a <b>member</b> who has appointed his own <b>CAP</b> to settle <b>transactions in listed securities</b> on behalf of that <b>client</b> ;
<b>“notice”</b>	means a general <b>announcement</b> published by <b>the Exchange</b> in printed or <b>electronic form</b> ;
<b>“Novation” or “Novate”</b>	means the extinguishing of the original <b>transaction</b> between the buyer and the seller of a <b>matched trade</b> or a reported <b>trade</b> on the MERJ <b>ATS</b> , and the replacement of buyer and seller with the appointed <b>Clearing Agency</b> and the <b>Clearing Agency Participant</b> . Thereby the <b>Clearing Agency</b> and the <b>Clearing Agency Participant</b> takes up all rights and liabilities to that original <b>transaction</b> .
<b>“offer”</b>	means a sell <b>order</b> at which the seller is willing to dispose of a listed <b>security</b> ;
<b>“officer”</b>	means, for the purposes of <b>these Rules</b> , a natural <b>person</b> registered with <b>the Exchange</b> as a <b>Compliance Officer</b> , <b>Settlement Officer</b> or <b>trader</b> of the <b>member</b> ;
<b>“off-market trade”</b>	means a <b>transaction</b> in a listed <b>security</b> that is not <b>matched</b> on the <b>ATS</b> , which is subsequently reported and accepted on the <b>ATS of the Exchange</b> ;

“opening price”	means the price of a listed <b>security</b> approved for trading on the <b>ATS</b> determined during the opening auction trading session of <b>the Exchange</b> ;
“order”	means an instruction from an <b>ATS Participant</b> to buy or sell <b>listed securities</b> or an instruction to amend an existing <b>order</b> ;
“original trade”	means a <b>trade</b> concluded on the <b>trade</b> date;
“person”	means an individual, corporation, partnership, association, trust or other <b>entity</b> as the context admits or permits;
“prejudiced clients”	means <b>clients</b> of <b>members</b> who have been prejudiced as a result of a <b>failed trade</b> ;
“pre-validated trade”	means a <b>trade</b> that is validated by <b>the Exchange</b> prior to execution;
“recognised jurisdiction”	means a country or territory as listed in Schedule 2 of the <b>Act</b> ;
“recognised overseas regulatory authority”	means a regulatory authority as defined in the <b>Act</b> ;
“recognised overseas securities exchange”	means a “ <b>recognised overseas securities exchange</b> ” as defined in the <b>Act</b> ;
“reference price”	means the most recent auction, traded price or <b>valid offer price</b> or in the absence of an auction, traded price or <b>valid offer price</b> , as determined by <b>the Exchange</b> and for the purposes of <b>these Rules</b> , <b>reference price</b> is superseded by the <b>ruling price</b> ;
“ruling price”	means a price as determined by a <b>member</b> of the <b>Exchange Executive Committee</b> in the absence of an auction, sale price or <b>valid offer price</b> , and shall supersede the <b>reference price</b> of the listed <b>security</b> ;

<b>“secondary market”</b>	means the market in which <b>listed securities</b> are traded after their primary issue;
<b>“securities”</b>	means <b>securities</b> and other financial instruments as defined in Schedule 1 of the <b>Act</b> ;
<b>“Securities Authority”</b>	means the Seychelles Financial Services Authority;
<b>“securities dealer”</b>	means <b>“securities dealer”</b> as defined in the <b>Act</b> ;
<b>“securities facility”</b>	means <b>“securities facility”</b> as defined in the <b>Act</b> ;
<b>“securities exchange”</b>	means <b>“securities exchange”</b> as defined in the <b>Act</b> ;
<b>“settlement” or “settle”</b>	means to discharge the obligations arising from a <b>transaction</b> ;
<b>“settlement date” or “s”</b>	means the day or days on which a <b>transaction</b> effected through <b>the Exchange</b> is due to be <b>settled</b> ;
<b>“Settlement Officer”</b>	means an <b>officer</b> of a <b>member</b> who is registered with <b>the Exchange</b> to manage the <b>settlement</b> of <b>trades</b> of <b>securities</b> other than those designated for pre-validated trading;
<b>“Seychelles”</b>	means the Republic of Seychelles;
<b>“the Exchange”</b>	means MERJ Exchange Limited, a company incorporated under the company laws of the <b>Seychelles</b> (Company Number 879858-1) and licensed to operate as a <b>securities exchange</b> in terms of the <b>Act</b> ;
<b>“the Rules” or “these Rules”</b>	means the rules of <b>the Exchange</b> as approved by the <b>Securities Authority</b> ;



“trade “or “transaction”	means a <b>matched trade</b> or an <b>off-market trade</b> in respect of a listed <b>security</b> and “trading” shall be construed accordingly;
“trader”	means a natural <b>person</b> employed by a <b>member</b> and registered with <b>the Exchange</b> , who is authorised by such <b>member</b> to enter into and execute <b>orders</b> or report <b>trades</b> through <b>the Exchange ATS</b> ;
“Trading Services Provider” or “TSP”	means a <b>member</b> approved by <b>the Exchange</b> to execute <b>trades</b> in <b>listed securities</b> , either for their own account or on behalf of <b>clients</b> ;
“valid offer price”	means a price of a listed <b>security</b> that is displayed on <b>offer</b> on the <b>ATS</b> during a continuous trading period for a time period not shorter than 60 (sixty) minutes, or such time period as prescribed by <b>directive</b> .
“virtual financial asset”	means any form of digital medium recordation that is used as a digital medium of exchange, unit of account, or store of value and that is not –  (a) <b>electronic money</b> ;  (b) a <b>security</b> ; or  (c) a <b>virtual token</b> ;
“virtual token”	means a form of digital medium recordation that has no utility, value or application outside of the distributed ledger technology platform on which it was issued and may only be redeemed for <b>funds</b> on such platform directly by the <b>issuer</b> of such asset, provided that <b>electronic money</b> shall be excluded from this definition.

# SECTION 1

## GENERAL PROVISIONS OF THE RULES

### 1.1 Legal status of the Exchange

**The Exchange** is a legal **entity** with limited liability, registered and incorporated in terms of the company laws of the **Seychelles**.

### 1.2 Addresses

The registered and postal address of MERJ Exchange Limited is:

**Office F28  
1st Floor  
Eden Plaza  
Eden Island  
Republic of Seychelles**

**The Exchange's** domicilium citandi et executandi is its registered address stated above.

### 1.3 Status of the Rules and the Directives

- a) **These Rules** and **Directives** hereto govern the operations of the **ATS** of **the Exchange** as prescribed by section 12 of the **Act**.
- b) In the event of any conflict:
  - i. between the **Act** and **the Rules**, the **Act** shall prevail; and
  - ii. between **the Rules** and any **Directive**, **the Rules** shall prevail; and
  - iii. between **these Rules** and any other rules of a designated market, **these Rules** shall prevail.

- c) **These Rules** shall be binding upon:
- i. **The Exchange**;
  - ii. the **officers** and employees of **the Exchange**; and
  - iii. **ATS Participants** and, where applicable, all their **officers**, employees and **clients**.
- d) **These Rules** are binding between:
- i. **The Exchange** and **ATS Participants**; and
  - ii. **ATS Participants** and their **clients**.

#### 1.4 Amendments to the Rules

- a) Any **ATS Participant**, hereinafter referred to as the “**applicant**”, may lodge a written proposal to the **Executive Committee** in respect of amendments to **these Rules** or any **Directives**.
- b) Upon receipt of a proposal from an **applicant**, the **Executive Committee** shall acknowledge receipt of the proposal on written **notice** to the **applicant** within 20 (twenty) **business days** of receipt of the proposal for the amendment.
- c) Thereafter the **Executive Committee** shall consider the proposed amendment within a further period of 20 (twenty) **business days** and may:
- i. request further information **in writing** from the **applicant** and upon receipt thereof consider the proposed amendment fully within a further period of 30 (thirty) **business days** and thereafter deal with the proposed amendment in terms of Rule 1.4 (c) (ii) or 1.4 (c) (iii) as the case may be; or
  - ii. reject the proposal and provide reasons for the rejection **in writing** to the **applicant**;  
or
  - iii. in the event that the **Executive Committee** considers the proposed amendment to be one which will enhance and / or improve the business efficiency and / or operations of **the Exchange** it may submit the proposed amendment together with a recommendation by the **Executive Committee** to the **Controlling Body** for consideration in which case the **Controlling Body** may:



- a. if the proposed amendment to **these Rules** is accepted and approved by the **Controlling Body**, submit the proposed amendment to the **Securities Authority** in terms of the **Act** for approval accompanied by an explanation of the reasons for the proposed amendment; or
  - b. reject the proposal and provide reasons for the rejection **in writing**.
- d) **The Exchange** shall issue a **notice** detailing any changes to **these Rules**.
- e) If the **Executive Committee** and/or the **Controlling Body** rejects a proposed amendment, then this decision will be final.
- f) Any proposed amendments to **the Rules** require final approval by the **Securities Authority**.
- g) For the avoidance of doubt, **the Exchange** may amend **these Rules**, in its sole and absolute discretion, in accordance with the **Act**.

## 1.5 Directives

For the purposes of giving effect to its Rules, to achieve all things that are necessary incidental or conducive to the proper operation of its business and fulfilling its functions, responsibilities and duties as a **securities exchange**, **the Exchange** may issue **Directives** in terms of the **Act** and **these Rules** provided such **Directives** are not inconsistent with the **Act**. Any **Directives** that are specifically referred to in **these Rules**, includes any subsequent amendment or replacement thereof from time to time.

## 1.6 Notices to ATS Participants

- a) Every **ATS Participant** must notify **the Exchange** of its mailing address, postal address and electronic mail address where a **notice** issued by **the Exchange** may be delivered.
- b) A **notice** issued by **the Exchange** to **ATS Participants** must be **in writing** and may be transmitted in **electronic form**.
- c) A **notice** sent in **electronic form** is deemed to have been received on the date of transmission, unless proved to the contrary by the **ATS Participant**.

## SECTION 2

### MEMBERS

#### 2.1 Categories of members criteria

- a) **Trading Services Providers** are categorised as follows:
  - i. Principal **traders** that execute **trades** as buyers or sellers of **listed securities** on their own account;
  - ii. **Agency traders** that execute **trades** as buyers or sellers of **listed securities** on behalf of **managed** and **non-managed clients**; and
- b) Only authorised and registered **TSP**'s can make an application to be an **ASP**.
- c) **ASP**'s.
- d) **CSP**.

#### 2.2 Member criteria

In order for an **applicant** to qualify as a **member of the Exchange**, the **applicant** must meet the following criteria:

- a) it is licensed as a **securities dealer** or is a recognised overseas **securities dealer**;
- b) it has directors who must all be at least 21 (twenty-one) years of age having full legal capacity;
- c) it has directors, **officers** and **traders** who must all be of good character and high business integrity, and the **applicant** shall never have been:
  - i. convicted of an offence resulting from dishonesty, fraud or embezzlement;
  - ii. expelled by a self-regulatory organisation, or recognised professional body;
  - iii. disqualified for reasons relating to their profession or occupation; or
  - iv. convicted in any jurisdiction of a serious offence relating to dishonesty under any legislation in the past ten (10) years;

- d) it has the financial resources to execute **transactions** required by **Directive 1** and as may be prescribed by **the Exchange**;
- e) it can demonstrate compliance with **these Rules** and the **Act**;
- f) it has procedures and supervisory duties imposed by **AMLA** and any other relevant legislation;
- g) it has appropriate internal control and risk management processes and procedures that;
- h) meet the requirements of the **Code of Conduct**; and are prudent and are documented and at a minimum covers the identification, management, measurement and oversight of various business risks. The identified risks should include but are not limited to areas such as proprietary trading, business interruption, technology, key **person**, credit, liquidity, market fraud, **settlement**, physical security and new products. Senior management must play a significant role in the adoption and maintenance of a comprehensive system of prudent internal controls and prudent risk management practices. This role should include the recognition of risk management as an essential part of the business process, management's willingness to fund the necessary elements of a prudent risk management system, including personnel and information technology costs, and recognition that prudent risk management is a dynamic function that must be modified and improved as the **member** business changes and improved processes and procedures become available;
- i) it holds fidelity insurance cover for its **clients** benefit in respect of negligence, fraud and misappropriation by directors, **officers, traders** or employees involved in performance of its services as a **securities dealer**; and;
- j) it has **officers** and **traders** that are registered with **the Exchange** that meet the **competency requirements** stipulated by **the Exchange** (see **Directive 2**).

## 2.3 Application for authorisation of a member

- a) An application for authorisation as a **member** shall be subject to:
  - i. the **Act, these Rules** and the **Directives**;
  - ii. a complete and compliant application, in the form prescribed by **the Exchange**, being submitted **in writing** to **Market Regulation**;
  - iii. the payment by the **applicant** of a non-refundable fee as determined by **the Exchange** in **Directive 7**;
  - iv. the **applicant** fulfilling the requirements in terms of **AMLA**; and
  - v. any other information as required by **the Exchange**.
- b) **The Exchange** may request further information which it deems necessary, to verify information submitted by the **applicant** to support an application.
- c) Upon receipt of a complete and compliant application from the **member** and payment of the non-refundable fee, **Market Regulation** will submit the application to the **Executive Committee** for its consideration.
- d) **The Exchange** shall notify the **member in writing** if its application for authorisation and registration as a **member** has been approved by the **Executive Committee**.
- e) **The Exchange** shall be entitled to refuse an application and a **notice in writing** will be provided to the **applicant**, with reasons for the rejection.

## 2.4 Termination of member status

- a) A **member** may terminate its status with **the Exchange** by giving 20 (twenty) **business days** written **notice** of the intended date of such termination and the reasons thereof to the Head of **Market Regulation** of **the Exchange**.
- b) **The Exchange** may accept the **notice** of termination unconditionally or conditionally or upon such conditions as it may deem fit, provided that **the Exchange** is satisfied that all outstanding obligations in terms of **the Rules** and **Directives** have been complied with.
- c) Once **the Exchange** is satisfied that all outstanding obligations in terms of **the Rules** and **Directives** including any conditions, if any, from **the Exchange** or **Securities Authority** have been complied with, the termination of that **member** shall be effected.
- d) **The Exchange** may terminate a **member's** status on written **notice** to the **member** if the **member** is:
  - i. placed under curatorship;
  - ii. declared bankrupt or is subject to a company reorganisation in terms of the Insolvency Act 2013 or suffers a similar legal disability in relevant laws of the jurisdiction of incorporation of the **member**;
  - iii. liquidated;
  - iv. granted any judgement against it that is not set aside by a Court having jurisdiction within fourteen (14) days of the judgement; or
  - v. found to have submitted misleading or untrue material in support of its application for admission.
- e) The **Securities Authority** will be notified of the termination of any **member** status and the reasons thereof.
- f) **Market Regulation** will publish a **notice** informing recipients of the termination of the **member**.



## 2.5 Duties of Officers and traders

- a) Every **member** shall have a **Compliance Officer** who:
- i. shall meet the **competency requirements** as per **Directive 2**;
  - ii. shall be responsible for receiving **notices** from **the Exchange** and the communication between **the Exchange** and the **member**;
  - iii. shall supervise the compliance by the **member** and its directors, **officers**, employees and agents with the **Act**, the **Code of Conduct**, **these Rules** and the **Directives**;
  - iv. will implement generally accepted systems and / or procedures for the **member**:
    - a. to monitor compliance and perform supervision and surveillance in terms of the **Act**, **these Rules** the **Code of Conduct** and **Directives** and **AMLA**; and
    - b. to perform surveillance for the detection of disorderly trading
    - c. patterns and any conduct that may involve market abuse.
  - v. shall at all times be registered with **the Exchange**; and
  - vi. shall report **in writing** to **the Exchange** any breaches by **members** of the provisions of the **Act**, **the Rules**, the **Code of Conduct** and **Directives**;
- b) Each **member** wishing to **trade** in **securities** not designated for pre-validated trading shall have a **Settlement Officer** who:
- i. shall be registered with **the Exchange** and meet the **competency requirements** as per **Directive 2**;
  - ii. shall ensure **settlement** takes place as prescribed by Section 6 of **the Rules** and **Directive 4**;
  - iii. shall immediately report any **settlement** transgressions in terms of the **Act**, Section 6 of **these Rules** and **Directive 4** to the **Compliance Officer** of the **member**; and
  - iv. shall at all times comply with the **Code of Conduct**.



- c) Each **member** shall have a **trader** who:
  - i. may not act as the **Compliance Officer** or **Settlement Officer** of the **member**;
  - ii. shall be registered with **the Exchange** and meet the **competency requirements** required as per **Directive 2**;
  - iii. shall at all times comply with the **Act**, the **Code of Conduct**, **these Rules** and **Directives**; and
  - iv. must execute **transactions** in terms of the trading and reporting requirements of Section 5 of **the Rules** and **Directive 3**.

## 2.6 Application for authorisation and registration of an officer

- a) An application for authorisation and registration as an **officer** of a **member** (“the **applicant**”) shall be subject to:
  - i. the **Act**, **these Rules** and the **Directives**;
  - ii. a complete and compliant application, in the form prescribed by **the Exchange**, being submitted **in writing** by the **member** on behalf of the **officer** to **Market Regulation**;
  - iii. the payment of a non-refundable fee as determined by **the Exchange** in **Directive 7**;
  - iv. the **applicant** fulfilling the requirements in terms of **AMLA**; and
  - v. any other information as required by **the Exchange**.
- b) **The Exchange** may request further information which it deems necessary, to verify information submitted by the **applicant** to support an application.
- c) Upon receipt of a complete and compliant application, **Market Regulation** will submit the application to the **Executive Committee** for its consideration.
- d) **Market Regulation** shall notify the **member in writing** if the application for authorisation and registration of the **officer** has been approved or not.
- e) If the application has been refused, the Head of **Market Regulation** shall provide a **notice in writing** with reasons for the rejection.
- f) In the case of a recognised overseas **securities dealer**, the **officer** must provide proof that he is authorised and registered by a recognised overseas regulatory authority to deal



in **securities** and is an **officer** or equivalent of a **member** of a recognised overseas **securities exchange**.

## 2.7 Capital adequacy requirements

- a) Notwithstanding Section 20 of the Securities (Financial Statements) Regulations, 2008, **members** shall at all times hold sufficient **funds** of their own to meet their obligations.
- b) The **member's** capital adequacy requirements shall be the sum of the **member's**:
  - i. position risk requirement;
  - ii. counterparty risk requirement;
  - iii. large exposure risk requirement;
  - iv. foreign exchange risk requirement;
  - v. operational risk; and
  - vi. any other risk requirement.
- c) The capital adequacy returns in terms of **Directive 1** shall be submitted to the **Market Regulation in writing** periodically as stipulated in **Directive 1** or as otherwise agreed with the Head of the **Market Regulation**.

## 2.8 Inspections

Without prior **notice**, the **Exchange** may inspect the records, business premises and business operations, including any documentation held on their behalf, of a **member**, its **officers, traders**, employees or any other **person or entity** that is involved in the provision of **securities** services at any time by means of the **ATS**. All such visits, inspections and the outcomes will be periodically reported to the **Securities Authority**.

## 2.9 Fees and levies

- a) **Members** shall disclose to their **clients** the **fees** and **levies** that they may charge for their services and **transactions** in terms of the **Code of Conduct**.
- b) **Members** may charge a different fee or levy for different categories of **transactions**.

## SECTION 3

### FUNCTIONS AND DUTIES OF MEMBERS

#### 3.1 All members shall ensure that they have the following in place before providing any services to clients:

- a) a **client agreement** in accordance with applicable law that covers the scope of services provided by the **member** to the **client**;
- b) where the **member** is not a **Clearing Agency Participant**, a **clearing agreement** with a **Clearing Agency Participant** of the appointed **clearing agency**; and  
where the **member** is a **Clearing Agency Participant**, a **clearing agency agreement** with the appointed **clearing agency**.

#### 3.2 Trading Services Provider

The **Trading Services Provider** shall:

- a) be responsible for the trading and execution services for **orders** in a fair, efficient and transparent manner:
  - i. for the **member's** own account; and
  - ii. on behalf of a **client**, where applicable, in terms of and in compliance with Rule 5 and the **Code of Conduct**
- b) be authorised and registered with **the Exchange** at all times to provide trading and execution services in terms of Rule 3.1 (a);
- c) ensure at all times that the trading services being provided by the **member** to each **client** is in compliance with the terms and conditions of the **client agreement** referred to in Rule 3.1 (a);
- d) ensure that all the trading and reporting requirements for **transactions** in **listed securities** are met and are submitted timeously in terms of Section 5 of **these Rules**, **Directive 3** and **Directive 4**;
- e) report any **affected persons** whose **securities** are traded on the **ATS** in the form required by MERJ as per **Directive 3.4**;
- f) provide on an ongoing basis updated description of any interest held by the **member**, an **affected person** of the **member**, the **member's** group, and any partner and director of

that company in an **issuer** or its subsidiaries, or by an **issuer** in the **member** to **Market Regulation**; and

- g) comply with all the responsibilities and duties as prescribed for **members** in the **Act**, **these Rules**, the **Code of Conduct** and the **Directives**;

### 3.3 Custody services Provider (CSP)

The **Custody Services Provider** shall be authorised and registered as a **CSP** with MERJ at all times;

- a) be responsible for providing **custody services** to **clients**;
- b) ensure that the **client agreement** includes provisions relating to **custody services** for **listed securities**, (including issues pertaining to **corporate actions** as contemplated in **Directive 6**);
- c) ensure at all times that the **custody services** being provided to the **client** in respect of **listed securities** is in compliance with the **client agreement**;
- d) **clear** and settle all **trades** in accordance with **these Rules** and those of any approved **Clearing Agency** or **Securities Facility** as the case may be;
- e) ensure that all the trading and reporting requirements for **trades** are met and are submitted timely in terms of **these Rules**;
- f) establish a **nominee** which must:
  - i. be wholly owned by a holding company of a **member**;
  - ii. be adequately insured against loss through fire, theft, and the like for trust assets held by the **nominee** as well as hold fidelity guarantee cover;
  - iii. be approved by **the Exchange** and legally permitted to act as a **nominee** in accordance with applicable laws;
  - iv. conclude a written agreement with the **client** on behalf of whose assets it will hold, which agreement shall comply with the minimum requirements as required by **the Exchange**, the **Act**, **these Rules** and the **Securities Authority**;
  - v. not have a natural **person** as a shareholder;
  - vi. not approve or give effect to the transfer of its issued shares without the prior written consent of **the Exchange** and, in the case of a **securities dealer** licensed in **Seychelles**, the **Securities Authority**;
  - vii. be prohibited, in terms of constitutional documents, from incurring any liability, including without limitation contingent liabilities such as suretyship or indemnification,

- other than the liabilities it incurs to its **clients** in respect of assets held on their behalf and its ordinary obligations to its holding company (the **member**);
- viii. be prohibited, in terms of constitutional documents from acquiring any interest, for its own account, in any other company;
  - ix. have a limitation, in its constitutional documents, on the issuing of any un-issued share capital, rights issue, preference shares or debentures by the **nominee**, without the prior approval of **the Exchange** and, in the case of a **securities dealer** licensed in **Seychelles**, without the approval of the **Securities Authority**;
  - x. collect corporate action entitlements, dividends and interest relating to all **securities** held on behalf of **clients**, verify the calculations and timely payment thereof and convey all details of any options and rights issues to **clients**;
  - xi. have no authority to exercise any rights pertaining to **corporate actions** as contemplated in **Directive 6** that are attached to **securities** registered in the **nominee** company's name unless instructed to do so by its **client**;
  - xii. have a register of the **beneficial ownership** of **clients** in **listed securities** in the name of the **nominee** company by **persons** reflected in the register as evidence of ownership;
  - xiii. ensure at all times that, the assets of the **member** are separated from the assets of the **nominee**; and
  - xiv. have as its sole objective, the conduct of the business of taking title of assets on behalf of **persons**, holding such assets in custody and electronically administering and maintaining a **nominee** register on their behalf, and to otherwise only deal with such assets as may be instructed by its **clients**.



### 3.4 Advisory Service Providers (ASP)

- a) An **applicant** may request authorisation to perform **advisory services** provided that the **applicant** is an authorised and registered **Trading Services Provider** and can evidence to the satisfaction of **the Exchange** that it has employed or will employ adequate and prudent resources, procedures and systems necessary for the effective performance of **advisory services** and for ensuring compliance with the **Act, the Rules** and the **Directives** that are relevant to the performance of **advisory services**.
- b) **ASPs** shall:
  - i. ensure that the **client** has understood and agreed, **in writing**, the terms and conditions of the provision of **advisory services** to the **client** by the **ASP**;
  - ii. have **officers** and employees that meet the **competency requirements** in **Directive 2**; and
  - iii. only be authorised in terms of **these Rules**, to provide **advisory services** in respect of **listed securities**, unless they are authorised in terms of any other applicable law to furnish other **advice**.



## SECTION 4

# ACCOUNTING RECORDS AND SEGREGATION OF ASSETS

### 4.1 General Requirements for accounting records and audit for members

A **member** must:

- a) comply with the **auditor** requirements stipulated in Section 74 of the **Act**;
- b) comply with the accounting records and audit requirements stipulated in Section 75 of the **Act**;
- c) ensure audited annual financial statements in terms of Rules 4.1 (a) and 4.1 (b) are submitted to the Markets Supervision and Compliance Division not later than (3) months after the financial year end of the **member**; and
- d) comply with the **Code of Conduct** and Securities (Financial Statements) Regulations 2008 for record-keeping and internal control and risk management.

### 4.2 Segregation of ATS Participant assets and the Exchange assets

- a) **The Exchange** may establish one or more **ATS Participant** accounts for **funds** of **ATS Participants** held by **the Exchange**.
- b) The **ATS Participant** account holds **funds** for the benefit of **ATS Participants**.
- c) **The Exchange** may appoint an external administrator to open, administrate and manage the **client** and **ATS Participant** account on behalf of **the Exchange**.
- d) In the event of a loss of any or all of such **funds**, including interest on such **funds**, such loss will be apportioned gradually as circumstances and the liabilities of **the Exchange** may permit.
- e) In respect of **funds** held on behalf of **members' clients** the trust must pay to the **clients** such interest as it may from time to time be received on such **funds**, less a charge in respect of the services rendered by MERJ or an external administrator as the case may be.
- f) **The Exchange** must satisfy the **Securities Authority** that it holds adequate insurance cover against losses of **funds** held or deposited by **the Exchange** arising from the negligence, dishonesty or fraud of any employee of **the Exchange**, an external administrator or from theft.



- g) **The Exchange** may appoint agents, who are licensed as discretionary financial services providers, to manage the investments of **funds** in the **ATS Participant** account. Such investments will be restricted to money market investments as stipulated in **Directive 8**.



## SECTION 5

### TRADING AND REPORTING

#### 5.1 General trading and reporting requirements

- a) Only **persons** who have executed an **ATS Participant Agreement** with **the Exchange** which shall be binding on the parties and forms part of **these Rules**, may access the **ATS**.
- b) Only **listed securities**, as determined by **the Exchange**, shall be eligible for trading on the **ATS**.
- c) Each **order** posted on the **ATS** must be unconditional, firm and executable.
- d) Each **ATS Participant** shall keep all codes, passes, passwords or other **security** devices used to access the **ATS** confidential provided that in the case of a **member** its **Compliance Officer** and **trader** shall have access to such codes, passes, passwords and other **security** devices.
- e) A **member** shall allocate a **trade** that has been done on the **ATS** on the particular **business day** to a **client** or another **member** –
  - i. pursuant to a **clearing agreement** that was executed by means of an **order** made on the **ATS** by the **member** for his account;
  - ii. when the **member** has aggregated, or divided **trades** done in terms of an **order** from a **client** or another **member**; or
  - iii. if a **member** has conducted a **trade** on behalf of another **member** provided that:
    - 1. the allocation of a single **trade** or a subdivided **trade** shall take place within a period of time determined by **the Exchange**; and
    - 2. **The Exchange** may determine that the original price or average of the original prices or the price prevailing at the time of the allocation shall be made known to the **client** or the **member** giving the **order**.
- f) All **trades** must be conducted in accordance with the **Act**, Section 5 of **the Rules** and **Directive 3**.
- g) All **off-market trades** negotiated between two **members** reported on the **ATS** must be in accordance with Rule 5.6 and **Directive 3.1**.
- h) **The Exchange** will monitor and regulate trading and reporting of **trades** at all times.
- i) All **trades** executed between on the **ATS** will be binding in terms of **these Rules**.



- j) Trading periods are stipulated in **Directive 3.1**
- k) The standard lot sizes in respect of **transactions** in **listed securities** are stipulated in **Directive 3.3**.
- l) Without limiting the obligations of **ATS Participants** in terms of **these Rules**, trading and reporting operations and processes must comply with:
  - i. the **clearing** and **settlement** procedures in **Directive 4**.
  - ii. pre-trade obligations stipulated at **Directive 4.2.1** and post **trade** obligations at **Directive 4.2.2**;
  - iii. reporting requirements for **clearing** and **settlement** obligations in terms of **Directive 4.2.4**; and applicable requirements of the **Code of Conduct**.

When **ATS Participants** conclude **trades** with other **ATS Participants**, they shall be liable to each other for all their respective obligations arising from the **trade**.

- m) Types of **orders** permitted on **the Exchange** are stipulated at **Directive 3.6**.
- n) An **order** placed on the **ATS** can be cancelled at any time prior to execution, and if partially filled, any unfilled portion of an **order** can be cancelled or amended.

## 5.2 Member trades

When **members trade** with each other on **the Exchange** each **member** shall act as principal vis-à-vis each other and not as agent.

## 5.3 Priority of clients' orders

- a) A **client order** of a **member** shall take priority over the **orders** and **trades** of that **member** and its directors, **officers**, agents and employees and **orders** of **affected persons**.
- b) Any **transaction** executed by a **member** on behalf of an **affected person** must be reported to **the Exchange** within the times as stipulated in **Directive 3.4**.



## 5.4 Execution of client trades by members

- a) When a **member trades** with its **client**, as a principal, or on behalf of its **client**, as an agent, it shall do so by –
  - i. entering the **client's order** directly on the **client** account; or
  - ii. filling the **client's order** by trading and aggregating the **transaction** in the **member's client** sub-account, before allocating to the **client**; or
  - iii. employing another **member** to fill the **client order** on behalf of such a **member**.
- b) A **member** may grant **clients** direct access to the **ATS** ("DMA clients"). **Members** must have suitable systems in place to monitor and filter DMA **client orders**. **Members** shall indemnify and hold the exchange harmless for any and all Loss and Liability arising from the use of the **ATS** by its DMA **clients**.
- c) Each **member** must at all times act in accordance with the terms and conditions of the **client agreement s** entered into between the **member** and its **clients**.
- d) Each **member** shall adhere to the best execution principle, by taking reasonable care that it acts in the best interests of its **clients** and ensures that it obtains the best available result in its dealings with its **client**.

## 5.5 Agency trading and reporting

- a) No **member** may conclude a **transaction** with a **person** whom the **member** believes or suspects requires approval to undertake **management of securities** in terms of any law without having taken reasonable measures to ascertain that such **person** has the necessary approval.
- b) No **ATS Participant** or DMA **Client** may effect a **transaction** as an agent unless duly licensed and regulated to undertake **management of securities**. By entering into a **transaction** as an agent, each **ATS Participant** and DMA **Client**, warrants that it holds the necessary license, approval and authority to undertake **management of securities**.
- c) A **member** acting as an agent for a **non-managed client** shall:
  - i. ensure it has complied with **Directive 4.2.1** before executing a **transaction** on behalf of a **non-managed client**; and
  - ii. ensure compliance with reporting obligations of **Directive 4.2.4**;
- d) A **member** acting as agent for a **managed client** shall ensure:

- i. it has complied with **Directive 4.1 (b)** and / or **Directive 4.2.1 (c)** prior to trading on behalf of the **managed client**; and
  - ii. ensure compliance with reporting obligations of **Directive 4.2.4**;
- e) A **member** acting as an agent is permitted to **match a trade** on the **ATS** as principal and then allocate the **trade** to its managed or **non-managed client** provided this allocation is within the timeframes stipulated in **Directive 4. 2**.
  - f) Where there are several **clients**, in respect of one **trade** concluded by a **member**, the price to the **clients** is always the same as the price of the underlying **trade**.
  - g) When allocating the **trade**, the **member** will indicate the value of the commission that he is charging the **client** and any other costs involved.

## 5.6 Off-market trades between members

- a) The following **off-market trades** are permitted by **the Exchange** and must be reported to **the Exchange** within the time periods stipulated in **Directive 3.1**:
  - i. Large Portfolio **Trades (LP)** which is a **trade** negotiated between two parties which exceeds twenty (20) times the market size (the total number of those **listed securities** traded during that day).
  - ii. Corporate Finance **Trades (CF)** which is a **trade** that requires public notification in terms of the **Listing Requirements**.
  - iii. Give-up **Trade (GU)** is a **trade** where a **member**, acting as a principal, **trades** in a **security** with another **member**, acting as a principal or agent with the intention to pass a **trade** that has been executed by the first **member** on the same day to the second **member** at the price of the **original trade**.
  - iv. Out of hours **trade (OH)** which is any **trade** that takes place outside of market hours which must be reported to **the Exchange** per **Directive 3.1**.
  - v. **Trade corrections (TC)** which is where **the Exchange** determines that a **trade** was incorrectly traded and must be reported to **members** and their **clients**.
- b) Failure to comply with the time frames for reporting of **off-market trades** may result in penalties being imposed on the **member** by **the Exchange** per **Directive 5**.

## 5.7 Affected person trades (related person)

Any **trade** executed by a **member** on behalf of an **affected person** must be notified to **the Exchange** per **Directive 3.4**.

## 5.8 Matching criteria

- a) **The Exchange** may provide for auction trading periods and a continuous trading period per the times stipulated in **Directive 3.1**.
- b) The matching criteria for the auction and continuous trading period will be based on time priority and then price priority and visibility as stipulated at **Directive 3.6.1**

## 5.9 Restrictions on trading for members and their directors, officers or employees

Any directors, **officers**, **traders**, or employees of a **member** desiring to conclude **trades** in **listed securities** for their own account must receive prior written approval from their **Compliance Officer** who shall, prior to any such **trade**:

- i. ensure that the **member** has a documented policy for the management of conflict of interest and restrictions for trading by directors, **officers**, and employees of **members** trading in **listed securities in writing**;
- ii. ensure the **trade** does not create a conflict of interest for the **member**, director, **officer**, **trader** or employee prior to approval of the **trade**;
- iii. determine that the **trade** is reasonable; and
- iv. keep a record of all such approved **transactions**;

## 5.10 Unreasonable and void trades

- a) Where, in the opinion of **the Exchange**, any **trade** which would introduce systemic risk or negatively impact reputational risk, **the Exchange** may declare such **trade** void and any related **trade** void.
- b) In exceptional circumstances, an **ATS Participant** may request that **the Exchange** declare a **trade** void. In determining whether to grant such request, **the Exchange** shall give consideration to the time lapse since the **trade**, the erroneous nature of the **trade** and any market impact. Any decision that **the Exchange** takes in this regard shall be final.



- c) The declaration by **the Exchange** of a void **trade** shall be binding on the **ATS Participants** the **client** of the **member** for whom the **trade** was executed and any related **trade** that was executed.

### 5.11 Prices, turnover and data

- a) **The Exchange** shall, on a daily basis, make **announcements** of **opening prices, closing prices, execution prices** and turnover figures relating to **transactions** of **listed securities**.
- b) Where the **closing price** cannot be determined due to any circumstance which may arise, or the **ATS Participants** are not satisfied with the **closing price**, then **the Exchange** may, at its discretion provide a **reference price** or a **ruling price**.

### 5.12 Short selling

- a) Naked shorting occurs when the seller of a listed **security** does not have the **securities** to meet its **settlement** obligations.
- b) Naked shorting is not permitted in terms of Section 67 of the **Act** and **these Rules**.

### 5.13 Emergency powers

- a) **The Exchange** may suspend trading in the interest of the protection of its **members, clients** and the general public if there are any unforeseen circumstances leading to or actual occurrences of an event described in Rule 5.13 (b), provided that **the Exchange** has notified the **Securities Authority** thereof and has issued the **Securities Authority** with reasons therefor.
- b) **The Exchange** shall be entitled to declare a **market halt**, restriction or suspension of trading in any of the following circumstances:
  - i. a technical failure of the **ATS**;
  - ii. the **ATS** cannot be used at any time by more than 25% of all **ATS Participants**;
  - iii. the occurrence of a force majeure event, being an event of fire, lightning, explosion, flood, hurricane, act of God, war, terrorism, civil disorder, state of emergency, epidemics, plagues, strikes, boycotts or any other event beyond the control of **the Exchange**;
  - iv. a correction in any domestic or global market; or



- v. any other unforeseen event, and any other matter or event that impacts on the operations of **the Exchange**.
- c) If a **market halt**, restriction or suspension of trading is declared, **the Exchange** shall convey this to by way of an **announcement** stipulating:
  - i. the reasons for the **market halt**, restriction or closure of the operations;
  - ii. the period of the **market halt**, restriction or close of operations; and
  - iii. the timing of a meeting to review the **market halt**, restriction or suspension of operations.





## SECTION 6

### CLEARING AND SETTLEMENT

#### 6.1 General clearing and settlement provisions

- a) **The Exchange** may contract the services of a **clearing agency** or **securities facility** with the purpose of **clearing** and settling **transactions** on the **ATS** in accordance with **these Rules**. Any **clearing** and **settlement** services required by **the Exchange** and any **clearing** and **settlement** duties and responsibilities of **the Exchange**, may be delegated by **the Exchange** to a **clearing agency** or **securities facility** so appointed.
- b) Each **ATS Participant** must either –
  - i. appoint a **Clearing Agency Participant** in terms of a **clearing agreement**, provided that such **Clearing Agency Participant** must have a valid **clearing agency agreement** in place with a **clearing agency** approved by **the Exchange**; or
  - ii. have a valid **clearing agency agreement** in place with a **clearing agency** approved by **the Exchange**;
- c) **Trades** will be **cleared** and **settled** by the **clearing agency**:
  - i. when a **trade** involving two **ATS Participants** has been **matched**; or
  - ii. upon an allocation of a **trade** in accordance with **these Rules**.
- d) Once a **trade** has been novated, neither **the Exchange** nor its **clearing agency** shall be obliged to recognise the interest of any third party.
- e) **Securities** facility services related to **trades** shall be effected through a **securities facility** appointed by Exchange.
- f) All **settlement** of **funds** and **securities** resulting from **trades** shall take place in accordance with this Section 6, **Directive 4** and such procedures prescribed by the **clearing agency** or **securities facility** appointed by **the Exchange**.



## 6.2 Specific clearing and settlement requirements

- a) **Members** must fulfil all **clearing** and **settlement** requirements for its own account and for its **managed clients'** and **non-managed clients'** accounts in terms of **these Rules** and **Directive 4**.
- b) **Settlement of transactions** can be as follows:
  - i. on a real time (t+0) gross **settlement** basis for a **pre-validated trade** relating to **securities** designated for pre-validated trading by **the Exchange** from time to time.;  
or
  - ii. on other t+n days, which is only permissible in exceptional circumstances for systemic risk to be avoided and must be approved by **the Exchange**.
- c) An **ATS Participant** who fails to meet its **settlement** obligations in terms of **these Rules** shall be declared a Defaulting **ATS Participant**, at the sole discretion of **the Exchange**.
- d) An **ATS Participant** must ensure that it has the appropriate **settlement** systems in place and that it will be able to fulfil its **settlement** functions and obligations under **these Rules** at all times.
- e) **ATS Participants** may enter into **securities** lending and borrowing or repurchase agreements to expedite **settlements of trades**. In respect of **members**, these agreements must be approved by the **member's clients** where the **client's listed securities** are to be lent.
- f) **ATS Participants** selling **listed securities** shall be responsible for the proper delivery of these **securities** for **settlement** as required in terms of **these Rules**.
- g) **ATS Participants** must ensure that the **securities** are submitted timeously.

## 6.3 Margin on trades in listed securities

- a) **ATS Participants** are required to provide a margin for **trades** other than **pre-validated trades** which remain uncovered or uncommitted at 12h00 on S-1 in terms of **Directive 4.2.4**.
- b) The margin must be received by **the Exchange** by 16h00 on S-1. Margin requirements are stipulated at **Directive 4.2.5**.

#### 6.4 Penalties for late settlements

Failure to submit **clearing** and **settlement** instructions as directed by **the Exchange** will result in fines being levied in accordance with Section 18 of the **Act** and as further stipulated in **Directive 5**.



## 6.5 Failed trades process and triggers

- a) **The Exchange** may declare a **failed trade** in the following circumstances:
  - i. the failure by the **ATS Participant** to comply with Section 6 of **the Rules** and **Directive 4.2.4** in respect of such **trade**;
  - ii. failure by the **ATS Participant** to comply with **Directive 1** in respect of such **trade**; or
  - iii. if, in the opinion of **the Exchange**, the **trade** will introduce systemic risk into the market.
- b) A **failed trade** will be dealt with at the sole discretion of **the Exchange**, using either the buy-in terms of Rule 6.6.1 or sell-out procedure in terms of Rule 6.6.2.

## 6.6 Failed trade buy-in procedure

- a) Where **the Exchange** declares a **trade** to be a **failed trade** because the selling **ATS Participant** is deemed unable, by **the Exchange** to deliver on **settlement date** due to insufficient **listed securities** then the buy-in procedure may be initiated by **the Exchange**.
- b) The selling **ATS Participant** shall immediately commence the buy-in procedure on receiving notification **in writing** from **the Exchange** that a **failed trade** has been declared by **the Exchange** and that the selling **ATS Participant** must commence the buy-in procedure.
- c) The **ATS Participant** will manage the buy-in procedure on the **trade** instructions received from **the Exchange** and not at their own discretion.
- d) The buy-in procedure must be initiated at the ruling **offer** price or as determined by **the Exchange**.
- e) **The Exchange** shall immediately notify the **securities facility** and, in the case of a **member**, the buying and selling **member's CAP in writing** that a **failed trade** has been declared and that buy-in procedures will commence.
- f) The **ATS Participant** will provide regular updates on the buy-in procedure to **the Exchange** who will in turn notify the **securities facility** and the buying and selling **member's CAP**.
- g) The selling **ATS Participant** who introduced the **failed trade** must continue to seek and procure such **listed securities** during subsequent trading in order to settle its obligations.
- h) The **listed securities** so procured shall be used to complete the previously failed delivery of **securities** as follows:

- i. **the Exchange** will advise the relevant selling and buying **ATS Participant** that the **trade** will be rolled for up to 5 (five) days to a revised **settlement date** determined by **the Exchange**; and
  - ii. **the Exchange** will notify, **in writing**, the buying **member's CAP** to lift its commitment on the **original trade** so that the **settlement date** of the **trade** can be revised.
- i) Where there are no **listed securities** to purchase, **the Exchange** may act as the lender of last resort per **Directive 4.2.6**.
  - j) Where there is no available supply of a listed **security** to purchase, or the price of the listed **security** in the opinion of **the Exchange** introduces systemic risk in the market, **the Exchange** may halt trading in that listed **security**.
  - k) Any decision made by **the Exchange** will be binding on all parties and **ATS Participants**.
  - l) After all attempts to restore the **trade** have been exhausted, **the Exchange** may, at its sole discretion, declare a default to be dealt with in term of Section 7 of **the Rules**.
  - m) In the event of the **failed trade** being an **agency trade**, the selling **member** shall be responsible to pay all expenses and losses associated with the buy-in procedure subject to recourse in terms of **Directive 4.2.3**;
  - n) In the event of the **failed trade** not being an **agency trade** the **ATS Participant** shall be responsible to pay all expenses and losses associated with the buy-in procedure.

## 6.7 Failed trade sell-out procedure

- a) Where **the Exchange** declares a **failed trade** because the buying **member** is deemed by **the Exchange** unable to effect payment for a **trade** by **settlement date**, then the sell-out procedure may be initiated by **the Exchange**.
- b) **The Exchange** shall immediately notify the buying and selling **ATS Participants**, or in the event of a **member**, its **CAP in writing** and the **securities facility** that a **failed trade** has been declared and that sell-out procedures will commence.
- c) The buying **ATS Participant** shall immediately commence the sell-out procedure on receiving notification **in writing** from **the Exchange** that a **failed trade** has been declared by **the Exchange** and that the buying **ATS Participant** must commence the sell-out procedure.
- d) The **ATS Participant** will manage the sell-out procedure on **trade** instructions received from **the Exchange** and not at their own discretion.

- e) The **ATS Participant** will provide regular updates on the sell-out procedure to **the Exchange** who will in turn notify the **securities facility** and the buying and selling **members CAP**.
- f) The sell-out procedure must be initiated at the ruling **bid** price.
- g) The buying **ATS Participant** who introduced the **failed trade** must continue to sell such **listed securities** during subsequent trading in order to settle its obligations.
- h) The **funds** so acquired from the sell-out procedure shall be used to complete the previously failed delivery of **funds** as follows:
  - i. **the Exchange** will advise the selling and buying **ATS Participants** that the **trade** will be rolled to a revised **settlement date** determined by **the Exchange**; and
  - ii. **the Exchange** will notify the **CAP in writing** of the selling **member** party to lift its commitment on the **original trade** so that the **settlement date** of the **trade** can be revised.
- i) If there is no available supply of a listed **security** to sell, or the price of a listed **security** in the opinion of **the Exchange** introduces systemic risk in the market, as a result of a shortage of the listed **security**, then **the Exchange** may halt trading in that listed **security**.
- j) Any decision made by **the Exchange** will be binding on all parties and **ATS Participants**.
- k) After all attempts at restoring the **trade** have been exhausted, **the Exchange** may, in its sole discretion, call a default.
- l) In the event of the **failed trade** being an **agency trade**, the **member** shall be responsible to pay all expenses and losses associated with the sell-out procedure subject to recourse in terms of **Directive 4.2.3**; and
- m) In the event of the **failed trade** not being an **agency trade**, the selling **ATS Participant** shall be responsible to pay all expenses and losses associated with the sell-out procedure.



## 6.8 Penalties for failed settlements

Where **ATS Participants** fail in their **settlement** obligations, **the Exchange** may invoke the following sanctions per Section 18 of the **Act**:

- a) reprimand or censure first time offenders;
- b) impose penalties as laid out in **Directive 5** which will be calculated on the value of the **transaction**;
- c) impose additional fines;
- d) suspend offenders; and
- e) expel negligent and/or persistent offenders.

## SECTION 7

### DEFAULTS

#### 7.1 Default Protocol

- a) In the event of a default, as defined in 7.2 below, the provisions of the default procedures prevail over **the Rules** and **Directives** for **settlements**.
- b) If a **member** of **the Exchange** suspects a default of a **trade** and the default is not reported immediately, that **member** shall be in breach of **these Rules**.

#### 7.2 Events of Default

A default shall occur where:

- a) the **member** commits a breach of **these Rules**, including any **Directive**, and, if such breach is capable of being remedied, fails to rectify such breach within 7 (seven) **business days** of being called upon to do so by **the Exchange**;
- b) the **client** of a **member** fails to fulfil any of its **settlement** obligations in respect of a **trade** and the **member** cannot fulfil the **client's** or its **settlement** obligations in terms of **these Rules**;
- c) the **ATS Participant** is unable to fulfil any of its obligations in respect of a **trade**;
- d) the **ATS Participant** is declared insolvent, bankrupt or suffers a similar legal disability under any applicable law or an application is made to liquidate or sequester the **ATS Participant** in a court of law;
- e) the **ATS Participant** fails to provide adequate assurance to **the Exchange** under **the Rules** that it can fulfil its obligations in respect of any **trade**; and
- f) the **ATS Participant** is unable or appears to become unable to fulfil any obligations in terms of **these Rules** and applicable **settlement** procedures at the sole discretion of **the Exchange**.





### 7.3 Declaration of Default

- a) Any **member** who becomes aware of a default or suspects that a default or pending default may occur must immediately notify the Head of **Market Regulation in writing** of the default or pending default.
- b) **The Exchange** shall confirm **in writing** to the **Settlement Officer** and the **Compliance Officer** of the **member** the **notice** of the default or suspected default.
- c) The Head of the **Market Regulation** may declare default at any time, whether or not a **member** has notified it of a default or suspected default.

### 7.4 Appointment of Default Official

- a) Upon declaration of default by **the Exchange**, the Head of **Market Regulation** shall immediately appoint a **Default Official** and notify the **ATS Participant** and, in respect of a **member**, the **clearing agency**, the **securities facility**, the **member's CAP** and the **Securities Authority**.
- b) The **Default Official** shall represent **the Exchange** in relation to the **member**, the **clearing agency**, the **securities facility** and the **member's CAP** and complete the default procedures under this Section 7 of **these Rules**.
- c) The powers and duties of the **Default Official** shall include but not be limited to:
  - i. obtaining access to all necessary documents of the **member** to perform the duties and responsibilities in terms of **these Rules**;
  - ii. attending all meetings including meetings of creditors;
  - iii. summoning any **member** and **client** of a **member** to attend these meetings;
  - iv. requiring any **member**, its **officers**, employees and **clients** to assist with any investigation;
  - v. furnish a report detailing the default to Head of **Market Regulation**, the **Executive Committee**, the **ATS Participant** and in the case of **members**, the **clearing agency**, the **securities facility** and the **member's CAP** and the **Securities Authority** within 5 (five) **business days** of the declared default; and
  - vi. **the Exchange** remains responsible at all times for the management of the default process in terms of **these Rules**.



## 7.5 Suspension of a member for a failed trade

- a) An **ATS Participant** may be suspended at any time if it cannot effect **settlement**.
- b) An **ATS Participant's** registration may be suspended at any time after **the Exchange** has declared the **ATS Participant** a defaulter.
- c) The **ATS Participant** has 10 (ten) **business days** from date of suspension to dispute the decision by **the Exchange** regarding its suspension and refer it to **the Exchange's** dispute procedures in terms of Rules 10.4 to 10.7.
- d) Where the defaulter does not object to the decision within the specified time, or an objection to the suspension is dismissed, the decision of **the Exchange** is regarded as final.
- e) Any objection lodged with **the Exchange** will immediately be referred to **the Exchange's** dispute procedures in terms of Rule 10.4 to 10.7.

## 7.6 Member default procedure

- a) Where a **member** is declared in default, **the Exchange**, together with the **Default Official**, may assist in fulfilling any obligations on behalf of the Defaulting **Member**.
- b) In addition to assisting and fulfilling the obligations of a Defaulting **Member**, **the Exchange** and the **Default Official** will:
  - i. determine the extent of the Defaulting **Member's** obligations;
  - ii. determine the default amounts and net **settlement** obligations; and
  - iii. utilise any **securities, funds**, lending agreement guarantees, margin, or any assets held by any **Clearing Agency Participant** or other **Designated Market** on behalf of the Defaulting **Member** to fulfil the obligations of the Defaulting **Member** or appoint an independent party to fulfil these obligations.
- c) No **member** shall compromise or accept payment on account from, or with, any Defaulting **Member** or its **client** in connection with any **failed trade** from the time of declaration as a defaulter.
- d) The **Default Official** together with **the Exchange** shall determine the defaulting net **settlement** amounts of the Defaulting **Member** in respect of **listed securities**.
- e) **The Exchange** may assist in the lodging of any claims against the **Guarantee Fund** on behalf of the **member** or the **member's client**.

**The Exchange** shall notify the **Securities Authority** of the particulars of the matter, including any action taken against an **ATS Participant** within seven (7) days of taking such action and may notify any other regulatory authority, **Designated Market, members** and their **clients**, and **members** of the public the name of the defaulter as **the Exchange** deems fit.

## 7.7 Client default procedure

In terms of **these Rules** and default procedures, **clients** are categorised as **Defaulting Clients** or **prejudiced clients**:

- a) **Defaulting Clients** are subject to the following:
  - i. the name of the defaulter will be included in a register of defaults;
  - ii. the name of the defaulter will be circulated by way of a **notice** to all **members**; and
  - iii. no other **member** shall do business with a **Defaulting Client**;
- b) In the event of a default by a **client, prejudiced clients** and **members** in terms of **these Rules** are subject to the following:
  - i. claims will be considered against the **Guarantee Fund** in respect of **matched trades** concluded with or on behalf of the **prejudiced client** or the **member** on its own account; and
  - ii. the **Guarantee Fund** shall be protected in respect of **trades** done by the **member** on its own account or the **prejudiced client** after the default has been declared by **the Exchange**.

## SECTION 8

### THE GUARANTEE FUND

#### 8.1 Objects of the Guarantee Fund

- a) **The Exchange** shall establish and maintain to the satisfaction of the **Securities Authority**, a **Guarantee Fund** or compensation Fund (to be constituted as a Trust). The ownership of the **Guarantee Fund** will be in terms of the **Guarantee Fund's** founding documents.
- b) The purpose of the **Guarantee Fund** is to provide compensation to both **members** and **prejudiced clients**, as the case may be, in terms of the claims allowed against the **Guarantee Fund** under Rule 8.2 (a) read with (b). The **Guarantee Fund** shall only provide such compensation in respect of **trades** in **listed securities**.
- c) The amount required by the **Guarantee Fund** for the discharge of claims prescribed in **these Rules** shall be agreed with the **Securities Authority**.
- d) All claims permitted against the **Guarantee Fund** in terms of **the Exchange's** shall be subject to the **Guarantee Fund's** founding documents and **Directive 9**.

#### 8.2 Claims allowed against the Guarantee Fund

- a) The only claims permitted against the **Guarantee Fund** are claims arising from:
  - i. a **trade** deemed to be a default in terms of Rule 7.2 (b), (c) and (f);
  - ii. the net **settlement** obligations of the defaulter, which is the default amount or net amount due in terms of Rule 7.6; and
  - iii. losses incurred by **members** or **prejudiced clients** in re-transacting **trades** originally executed with the Defaulting **Member**.
- b) After the relevant claim on the **Guarantee Fund** has been met, no further claims shall be considered in respect of any one default event.

### 8.3 Trustees of the Guarantee Fund

- a) The **Guarantee Fund** shall be constituted by means of a Trust established in the **Seychelles** in terms of the Trust's founding documents.
- b) The Trust shall be managed and controlled by its trustees.
- c) The Trustees shall comprise of no less than five (5) **persons**, who shall have equal status, and shall include:
  - i. the **Chairperson** of the **Controlling Body** who shall be the **Chairperson** of the **Guarantee Fund**;
  - ii. the Chief Executive Officer of **the Exchange**;
  - iii. the Financial Director or Chief Financial Officer of **the Exchange**; and
  - iv. not less than 2 (two) other trustees appointed by **the Exchange** who are independent of the management and administration of the **Guarantee Fund**, who may or may not be **members** of **the Exchange's Controlling Body**.

### 8.4 Administration and consideration of claims

- a) The administration, consideration of claims and decision making in respect of the **Guarantee Fund** will be in terms of the founding documents of the **Guarantee Fund**.
- b) Claims against the **Guarantee Fund** shall be lodged **in writing** to the Trustees and must:
  - i. be addressed to the Trustees;
  - ii. include evidence of the **original trades** and evidence of **trades** concluded to settle the defaulter's net **settlement** positions;
  - iii. have a record detailing the extent of the loss incurred if any re-**transaction** has taken place covering the price losses incurred by the **member** and / or **prejudiced clients** in re-transacting **trades** originally executed with the Defaulting **Member**;
  - iv. include a report from the **Default Official**;
  - v. contain any further evidence that the Trustees may require; and
  - vi. comply with any other additional requirements set out in the founding documents of the **Guarantee Fund**.
- c) Payment of any amount in respect of any claim shall only be made in accordance with the founding documents of the **Guarantee Fund**.

## 8.5 Duties of the Trustees

- a) The Trustees shall in addition to the provisions of the founding documents for the **Guarantee Fund**:
  - i. keep the monies of the **Guarantee Fund** in a trust **bank** account established in the **Seychelles**;
  - ii. be the sole authorised signatories in respect of any correspondence or payments relating to the **Guarantee Fund**;
  - iii. establish and keep proper accounts, books and records in respect of the affairs, **funds**, assets and liabilities of the **Guarantee Fund**; and
  - iv. submit management and audited Annual Financial Statements to the **Executive Committee** and **Controlling Body** within the periods required by the **Controlling Body**.
- b) Any decision of the Trustees in terms of the **Guarantee Fund** shall be full and final, save any appeals permitted by the **Act**.

## 8.6 Administration of the Guarantee fund

- a) The administration of the **Guarantee Fund** will be done by **the Exchange** on behalf of the Trustees.
- b) All instruments of payment or transfer in respect of monies of the **Guarantee Fund** shall be signed jointly by any two trustees of the **Guarantee Fund**.

## 8.7 Contributions to the Guarantee Fund

- a) All **members** shall contribute to the **Guarantee Fund**.
- b) The basis upon which **members** must contribute to the **Guarantee Fund** will be determined by **the Exchange**.
- c) The liability of **members** to the **Guarantee Fund** is limited to their prescribed contributions to the **Guarantee Fund**.
- d) The contributions to the **Guarantee Fund** by **members** are non-refundable.

## 8.8 Limitation of payment of claims

- a) All claims paid by the **Guarantee Fund** to **members** and / or **prejudiced clients** of **members** shall be limited by the **Guarantee Fund**'s founding documents and amounts stipulated in **Directive 9** in respect of any one default event.
- b) Claims will be paid on a pro-rata basis in proportion to the total of all claims of **members** and / or their **prejudiced clients** in respect of the default in question.
- c) No **member** or **prejudiced client** may lodge a claim against **the Exchange** in respect of any claim lodged against the **Guarantee Fund**.

## 8.9 Winding up of the Guarantee Fund

In the event of a voluntary dissolution or winding-up of **the Exchange** in a court of law, the Trustees shall discharge the liabilities of the **Guarantee Fund** in the following order:

- i. firstly, all liabilities of the **Guarantee Fund** to the insurer of the **Guarantee Fund**;
- ii. secondly, any valid claims against the **Guarantee Fund** submitted by **members** or **prejudiced clients**
- iii. thirdly, any claims against the **Guarantee Fund** resulting from the administration costs of **the Exchange**; and
- iv. lastly, any beneficiaries in terms of the founding documents.

## 8.10 Surplus Funds

- a) The excess portion of **funds** available after payment of all liabilities of the **Guarantee Fund** will be distributed by the **Guarantee Fund** at the sole discretion of the trustees of the **Guarantee Fund** after consultation with the **Securities Authority** and subject to the approval of the **Securities Authority** as prescribed in the **Act**.
- b) In the event of any surplus **funds** remaining, these **funds** become an asset of **the Exchange**.

## SECTION 9

### MARKET REGULATION

#### 9.1 Objects of the Regulatory Framework

The chief objectives of **Market Regulation** are to:

- a) ensure that **trades of listed securities** are conducted in an orderly, fair, efficient and transparent manner in line with the **Act**, the **Code of Conduct**, **these Rules** and **Directives**;
- b) give effect to the surveillance of any matter relevant for the purpose of the **Act**, **these Rules** and the **Directives**;
- c) ensure that **the Exchange** and its **members** comply with the obligations of **AMLA**; and
- d) ensure that all **members** and their **clients** comply with any other relevant legislation referred to in the **Act**.

#### 9.2 Supervision, compliance and surveillance

**Market Regulation** will implement generally accepted systems and / or procedures (which may include the use of external audit services):

- a) to monitor compliance and perform supervision and surveillance in terms of the **Act**, **these Rules** and **Directives** and with the **AMLA**; and
- b) to perform surveillance for the detection of disorderly trading patterns and any conduct that may involve market abuse in terms of the **Act** and **these Rules** and the **Directives**.

#### 9.3 Powers, duties and procedures for enforcement

In addition to the powers in terms of Rule 2.8, **Market Regulation** will have the following additional powers:

- a) to call for any documentation and / or records which it may require from any **person** and / or **member** (including any directors, **officers**, **traders**, employees or agents thereof) that is subject to **these Rules** and **Directives**;
- b) to access the premises and / or records of any **person** and / or **member** (including any directors, **officers**, employees or agents thereof) that is subject to **these Rules** and **Directives**; and



- c) to refer any of its findings (including evidence gathered) to the **Disciplinary Committee** in terms of Section 11 of **the Rules**.

#### 9.4 Co-operation with the Securities Authority and other applicable Regulatory Organisations

The Head of the **Market Regulation** or his delegate shall:

- a) be responsible for **the Exchange's** communication with the **Securities Authority** and Directorate of Market Abuse;
- b) immediately report to the **Securities Authority** any breaches arising from disorderly trading conditions or any market abuse conduct that may arise in terms of the **Act** and **these Rules**;
- c) assist the **Securities Authority** and any other competent authority with any investigation of such a breach of the **Act, the Rules** or any other regulatory requirements required by **the Exchange**;
- d) meet monthly with the **Securities Authority** to review surveillance and compliance reports looking to detect any possible irregularities in the trading of **listed securities**.

#### 9.5 Confidentiality

**Market Regulation** shall treat as confidential any information received from **members** when a **transaction** in a listed **security** is under investigation or the **member** or their **client** is under investigation, except where:

- i. the information is publicly available;
- ii. disclosure is required by law, and by any other regulatory authority or applicable legislation;
- iii. disclosure is expressly permitted by law and the **Act**;
- iv. disclosure is required by **these Rules** and **Directives**; or
- v. authority has been granted **in writing** by the **member** and where appropriate the **member's client**.

## SECTION 10

### COMPLAINTS AND DISPUTE RESOLUTION

#### 10.1 Definitions

For the purposes of this section, the following terms shall have the following meanings:

- a) complainant” means the **person** that lodges the complaint;
- b) “Complaint” means a complaint by a **person** that is subject to **these Rules** relating to any agreement with, or a service or product of, a defendant in which it is alleged that the complainant has suffered or is likely to suffer financial prejudice or damage as a result of the defendants’ actions or inaction:
  - i. having contravened or failed to comply with a provision of any agreement, law or code of conduct subscribed to by the defendant;
  - ii. having willfully or negligently supplied, or failed to supply, a **securities** service or a product to the complainant;
  - iii. having treated the party unreasonably or inequitably; or
  - iv. having mis-administered the implementation of an agreement for the supply of services in terms of **these Rules** provided that such service or product supplied by the defendant is subject to the terms of **these Rules** or is otherwise supplied in the performance of the rights and obligations of the defendant in terms of **these Rules**.
- c) “defendant” means the **Member** that is the subject of the complaint;

#### 10.2 Internal Complaints Resolution Process

- a) **Members** shall implement and maintain internal procedures approved by **the Exchange**, hereinafter referred to as the “internal complaint resolution process” for dealing with any complaints.
- b) Where the internal complaint resolution process fails to resolve the complaint to the satisfaction of the complainant, the complainant may institute the dispute reporting protocol subject to the requirements of Rule 10.4 being met.



### 10.3 Internal complaint resolution procedures

The internal procedures for **members** to address complaints shall at a minimum consist of the following:

- a) having the systems in place to record and investigate all **client** complaints;
- b) written or oral complaints must be dealt with timeously;
- c) the employee responsible for the resolution of complaints must have the necessary authority to resolve complaints;
- d) a notification procedure must be in place for the **client**; and
- e) any recurring or systematic problems must be remedied.

### 10.4 Disputes

Disputes are categorised and defined as:

- a) unresolved complaints where the financial loss is greater than \$1,500 (one thousand five hundred US Dollars) or equivalent in a different currency between the complainant and the defendant; or
- b) a decision or action of **the Exchange** which excludes any decision or action relating to a dispute brought under Rule 10.4(a).

### 10.5 Composition of the Dispute Resolution Body

- a) The dispute resolution body established by **the Exchange** for the purpose of this Rule 10 “the Dispute Resolution Body” shall comprise not less than 4 (four) **persons**.
- b) The following **persons** shall not be eligible for appointment to the Dispute Resolution Body:
  - i. an employee of **the Exchange**, unless required in terms of any statute and **these Rules**;
  - ii. **Controlling Body members**, and such **Controlling Body members** may also not be present at a hearing unless he is party to the hearing.
- c) Members of the Dispute Resolution Body shall not have any conflict or potential conflict of interest in respect of any matter before the Dispute Resolution Body. A conflicted **member** shall not participate in the proceedings of the Dispute Resolution Body in respect of which he holds a conflict or potential conflict of interest.



- d) **The Exchange** may co-opt a **person** or appoint a **person** to replace a member who is not able to participate in any dispute resolution body procedures due to illness, conflict of interest or absent for any reason.

## 10.6 Dispute Resolution Body Procedures

- a) All procedures for disputes will be handled in terms of Rules 10.4 to 10.6;
- b) All disputes must be presented **in writing** to the Head of Regulation.
- c) A matter that is the subject of existing litigation cannot be submitted for dispute resolution in terms of this Rule 10.
- d) The Head of **Market Regulation** will confirm receipt of the complaint **in writing**.
- e) The complainant shall deliver a written memorandum to the Head of **Market Regulation** with a **clear** and concise summary of the complaint as well as the redress sought, and the Head of **Market Regulation** shall also circulate this to the other party within 7 (seven) **business days**.
- f) The defendant shall then have 7 (seven) **business days** to file a written statement containing its summary of the matter in dispute, which shall again be forwarded to the Head of **Market Regulation** and the complainant within 7 (seven) **business days**.
- g) The Dispute Resolution Body may request all parties involved in the complaint to provide copies of additional relevant documentation and correspondence required to review the dispute as it deems necessary.
- h) The Dispute Resolution Body will investigate the complaint and attempt to facilitate a resolution within 15 (fifteen) **business days** and issue a recommendation **notice** to the parties.
- i) Where a complainant or defendant is dissatisfied with the recommendation, it must inform the Head of **Market Regulation in writing** within 5 (five) **business days** of the receipt of the recommendation **notice** and upon receipt thereof, the complaint shall be dealt with by **the Exchange** pursuant to and in accordance with the following dispute resolution process as detailed below. The parties shall receive a **notice** from the Head of **Market Regulation** in this regard.
- j) The **Executive Committee** reserves the right to refer the matter to the **Disciplinary Committee** at any time after the complaint has been received **in writing** from the complainant.

- k) Nothing contained in **these Rules** shall be interpreted as subjugating any obligations between the **members** of and **the Exchange** or its appointed **clearing agency** or **securities facility** and all parties to the dispute shall comply promptly and fully with all such obligations notwithstanding the fact that a dispute is submitted under **these Rules**.
- l) The outcome of all complaints, including those of the Dispute Appeals Body will be forwarded to the **Securities Authority**.
- m) All costs associated with the hearing of the dispute before the Dispute Resolution Body relating to venue, recording, refreshments, transcribing and any independent arbitrator shall be borne in equal proportions by the parties respectively.
- n) For the purposes of achieving fairness between the parties, the Dispute Resolution Body shall in its sole discretion be entitled to make an award against the losing party to pay the legal costs that the successful party has incurred in addition to the proportionate costs due by the successful party in terms of Requirement 10.6 (m) above.

## 10.7 Dispute Appeal Body (DAB)

- a) If a recommendation **notice** issued by the dispute resolution body is not accepted by a party to the dispute, such party may submit all relevant documentation to the **Chairperson** of the Dispute Resolution Body within 5 (five) **business days** of receipt of the **notice** in terms of Rule 10.6(i).
- b) The **Chairperson** of the Dispute Resolution Body shall notify both parties to the dispute of the referral to the DAB and request each party to inform the DAB as to their respective legal representatives, within 10 (ten) **business days**.
- c) The DAB shall be chaired by the Head of **Market Regulation** or his **nominee** and two other **persons** to be appointed by the **Executive Committee**.
- d) If either or both of the parties to the dispute fail to reply in terms of Rule 10.6(c) above, such party or both as the case may be, will be deemed not to have a legal representative and be deemed to act on their own behalf.
- e) The DAB shall have the following powers:
  - i. to notify the parties or their legal representatives of the time and location of the meeting;
  - ii. to resolve a dispute through mediation, conciliation, recommendation or determination;
  - iii. to act independently in resolving a dispute or in making a determination;
  - iv. to follow informal, fair and cost-effective procedures;

- v. to, where appropriate, apply principles of equity in resolving a complaint;
  - vi. to report to the **Securities Authority** and to a body representative of the relevant category of financial institutions on matters that may be of interest to them;
  - vii. in making any determination, to provide for the effective enforcement of the determination in his discretion;
  - viii. allocate **settlement** costs as appropriate including costs arising out of this dispute;
- f) in exercising the above powers, the DAB must ensure that the questions, concerns and dispute of the parties are treated equitably and consistently in a timely, efficient and courteous manner;
- g) The determination by the DAB shall be final and are binding on the parties.



## SECTION 11

### DISCIPLINARY ACTIONS AND SANCTIONS

#### 11.1 General Powers of the Disciplinary Committee

- a) The **Disciplinary Committee** derives its powers from its appointment by the **Executive Committee** inter alia, to oversee and direct all disciplinary matters relating to **these Rules**.
- b) Disciplinary actions and sanctions shall be administered by the **Disciplinary Committee** or any **person** to whom it has delegated its powers. The powers and functions of the **Disciplinary Committee** include the following:
  - i. The **Disciplinary Committee** may investigate and take disciplinary action at any time against an **ATS Participant** (which in this section for the purposes of disciplinary proceedings shall include a **member's** directors, **officers** or employees) who contravene or fail to comply with the **Act, these Rules**, the interim exchange rules or the **Directives**;
  - ii. The **Disciplinary Committee** may suspend or restrict the activities of the **ATS Participant** on the **Exchange** on an interim basis when a matter is under investigation.
  - iii. The **Disciplinary Committee** has the power to receive, consider and deal with any referrals to it in terms of Rule 9.3(c).
- c) Any disciplinary action brought against a **member** by the **Disciplinary Committee** will be brought to the attention of the **Executive Committee in writing** and a report on the disciplinary proceedings shall be furnished to the **Securities Authority in writing** within 30 (thirty) days after the completion of the disciplinary proceedings.

#### 11.2 Co-operation of members

A **member** shall co-operate with the **Disciplinary Committee** in regard to any investigation pertaining to the contravention or non-compliance with the **Act, these Rules** and the **Directives**.

- a) The **Disciplinary Committee** may require **members** to disclose information or produce documents and evidence relevant to any investigation in terms of Rule 11.2 (a), whether or not such information or documentation is in the **member's** possession or in the possession or under the control of any of any agent of the **member**.



- b) In giving effect to its powers in terms of this section the **Disciplinary Committee** may formulate or develop any additional measures required for the purpose of investigating any contravention or non-compliance with the **Act, these Rules** and the **Directives**.

### 11.3 Investigation protocol

- a) The **Disciplinary Committee** may appoint an official to inspect the affairs of a **member** or any **person** involved in the management or administration of trading in **listed securities** to ascertain whether the affairs of the **member** have contravened or not complied with the **Act, the Rules** or the **Directives**.
- b) The official shall have the right or power to:
- i. gain access to the premises of any **member**;
  - ii. have access to any records, recordings, documents, or any information required to complete the investigation or to make copies of or take extracts of documents and information, including electronic recordings;
  - iii. question any director, **officer**, employee or agent of the **member**; and
  - iv. request information from any third parties providing services to **the Exchange** or its **members**.
- c) On completion of an investigation, a report shall be submitted to the **Disciplinary Committee** by the official.

### 11.4 Burden of proof

The burden of proof in respect of the allegation against a **member** rests solely with **the Exchange**. The **Disciplinary Committee** shall not find an allegation proven unless it is satisfied on a balance of probabilities on consideration of the evidence that the **member** has contravened or not complied with the **Act, these Rules** or the **Directives**.

### 11.5 Composition of the Disciplinary Committee

- a) The **Disciplinary Committee** shall not comprise less than 3 (three) **persons** and shall be appointed by the **Executive Committee**.
- b) **Members** of the **Disciplinary Committee** shall not have any conflict or potential conflict of interest in respect of any matter before it. A conflicted **member** shall not participate in the proceedings of the **Disciplinary Committee** in respect of which he holds a conflict or potential conflict.



- c) **The Exchange** may co-opt a **person** or appoint a **person** to replace a **member** of the **Disciplinary Committee** who is not able to participate in any **Disciplinary Committee** procedures due to illness, conflict of interest or absence for any other reason.

## 11.6 Disciplinary Committee protocol

- a) The **Disciplinary Committee** may vary any of its procedures to adapt to the circumstance of any particular alleged contravention or non-compliance of the **Act, these Rules** or the **Directives**.
- b) Upon referral, the **Disciplinary Committee** shall:
  - i. consider any contraventions or non-compliance by a **member** in respect of the **Act, these Rules** or the **Directives**;
  - ii. consider the contravention or non-compliance;
  - iii. consider the allegation against a **member** in respect of a contravention or non-compliance with the **Act, these Rules** or the **Directives**; and
  - iv. consider its responsibilities in respect of any allegation that the integrity and reputation of **the Exchange** has been or may be impaired as a result of the conduct of the **member** involved.
- c) The **Disciplinary Committee** shall produce a preliminary report highlighting:
  - i. the nature of the disciplinary proceeding;
  - ii. the facts referred to it;
  - iii. the investigations undertaken by it; and
  - iv. any other relevant facts which it has ascertained, in contemplation of the hearing to be held in terms of Rule 11.7 (a) to (j).

## 11.7 The Disciplinary Hearing

- a) The hearing of the **Disciplinary Committee** shall commence within 20 (twenty) **business days** after the completion of the preliminary report.
- b) Parties involved in the disciplinary hearing will be given **notice** of the time and place of the hearing.
- c) The **Compliance Officer** of the **member** concerned (hereinafter referred to as the defendant) must be present at the hearing.

- d) Disciplinary hearings will be conducted in private.
- e) The defendant is entitled to legal representation at its own cost.
- f) Evidence admitted and / or submitted from the defendant may be oral or written.
- g) Any party to the disciplinary hearing may submit evidence to the **Disciplinary Committee** at any time up until 10 (ten) days before the hearing.
- h) The **Disciplinary Committee** may in the interests of fairness and transparency require any director, **officer**, **trader** or employee of the defendant, and/or other parties, involved in the investigation who must appear before the **Disciplinary Committee** to give evidence.
- i) The defendant may appear in **person** or be legally represented during the investigation or hearing and shall be entitled to:
  - i. be heard in argument;
  - ii. give evidence in their own defence; and
  - iii. give evidence in mitigation.
- j) The **Disciplinary Committee** may grant a consent **order** in respect of any **settlement** negotiated between **the Exchange** and the defendant either prior to the start or before the conclusion of the hearing in relation to any disciplinary outcome.

## 11.8 Sanctions

- a) Where a **member** has been found guilty of contravention or non-compliance in terms of **these Rules** or **Directives**, the **Disciplinary Committee** may, per authority granted to MERJ as stipulated in Section 12 (2)(g) and Section 18 of the **Act**:
  - i. issue a warning or a reprimand **notice in writing** to the **member**;
  - ii. levy a fine not exceeding the amounts laid down by **these Rules**;
  - iii. issue a cease and desist order;
  - iv. revoke the registration of the **trader** or **officer** found to be party to the contravention;
  - v. order the **member** not to **trade**;
  - vi. issue an order directing restitution to any injured **person**;

- vii. require the **member** to take steps and give **in writing** an undertaking or any other remedy to prevent the recurrence of the contravention or non-compliance that has given rise to the disciplinary proceeding;
  - viii. in urgent cases such as criminal activity, insider trading or failure to meet **settlement** obligations, refer the matter immediately to the **Executive Committee of the Exchange**, who may suspend the access to the **ATS** of a **member** for such period as the **Executive Committee** deems necessary; and / or
  - ix. at any stage refer the matter to the **Executive Committee** which may in its sole discretion publish by way of a **notice** to other **members** the outcome of any disciplinary hearing.
- b) The level of co-operation afforded by the **member** will be taken into account upon the sanctioning of the **member**.
  - c) Where a **member** is aggrieved with the outcome of the disciplinary hearing and / or the sanction imposed the **member** may appeal against the outcome and / or sanction imposed to the Disciplinary Appeal Committee within 10 (ten) **business days** by filing with the **Chairperson** of the **Disciplinary Committee** a **notice** of the intention to appeal, setting out the grounds upon which the appeal is founded.
  - d) The Disciplinary Appeal Committee shall convene the appeal hearing within 20 (twenty) **business days** of the **notice** of appeal being filed and notify the parties to the hearing of the date and time of the appeal hearing.
  - e) In the appeal hearing the appeal shall be limited to the evidence which was adduced in the disciplinary hearing and no new evidence shall be permitted.
  - f) The parties to the appeal hearing shall be entitled to be legally represented and may make submissions orally or **in writing** which shall be limited to the evidence which was adduced in the disciplinary hearing.
  - g) The Disciplinary Appeal Committee shall be constituted by 3 (three) **persons** nominated by the **chairperson** of the disciplinary hearing who were not **members** of the disciplinary hearing that is subject to the appeal.
  - h) The Disciplinary Appeal Committee shall have the power to uphold or set aside the outcome of the disciplinary hearing including the sanction imposed in such hearing. The Disciplinary Appeal Committee may in its sole discretion, in the event that the outcome of the appeal hearing is upheld, vary the sanction imposed to the extent that it deems fit.
  - i) The decision made by the Disciplinary Appeal Committee must be reduced to writing and be forwarded to the parties and the **Securities Authority** within 30 (thirty) days of the conclusion of the appeal hearing and is final and binding on the parties and may not form the subject matter of any appeal process or litigation process in the **Seychelles** or any international jurisdiction.



- j) **The Exchange** may, upon the imposition of any sanctions contemplated in this Section, disclose these particulars in the Gazette, other national newspapers in the **Seychelles** or through other means at the sole discretion of **the Exchange**.



## SECTION 12

### FEES AND LEVIES

In terms of **these Rules** and the **Act**, **the Exchange** may charge **fees** and **levies**:

- a) to **ATS Participants** for their activities on the **ATS**;
- b) the **fees** and **levies** may be varied from time to time at the discretion of the **Executive Committee**;
- c) **The Exchange** may from time to time issue an **announcement** in respect of any change in **fees** and **levies**, provided that such **fees** and **levies** shall only take effect no less than 20 (twenty) **business days** from the date of such **announcement**;
- d) **Fees** and **levies** shall be paid within 30 (thirty) days of notification thereof;
- e) If an **ATS Participant** fails to make payment of any **fees** and **levies**, **the Exchange** shall issue the **ATS Participant** with 5 (five) days' **notice** to make such payment, failing which **the Exchange** may commence the default procedures set out in Rule 7.; and
- f) Any amount not paid on the due date thereof shall accrue interest at one percent (1%) per month to be accrued on the last day of each calendar month until the amount is paid in full subject to applicable laws.



## SECTION 13

### LIMITATION OF LIABILITY

- a) Save in the case of the gross negligence or willful default or breach, **the Exchange**, its directors, **officers**, employees shall not be liable to any **person**, whether a **member** or a **client** or any other **ATS Participant** for any loss, liability, damage, expense, costs or claim suffered or incurred by you arising out of or in connection with –
- i. the use of the **ATS**;
  - ii. any act, right, obligation or matter arising from **these Rules**; and
  - iii. any **trades** and **transactions**.
- b) To the fullest extent permitted by law, each **ATS Participant** irrevocably agrees to indemnify and hold harmless **the Exchange**, its directors, **officers**, employees ("Indemnified Parties") and to keep the Indemnified Parties indemnified and held harmless, from and against all claims and losses arising out of or in connection with any claim made or instituted against any of the Indemnified Parties by any third party, where such Claim arises in relation to, or as a result of any matter which liability is excluded in terms of paragraph a above.

